

Page Denied

Next 4 Page(s) In Document Denied

PAGE 2

1ST STORY of Level 1 printed in FULL format.

Copyright (c) 1984 The New York Times Company;
The New York Times

June 21, 1984, Thursday, Late City Final Edition

SECTION: Section B; Page 8, Column 3; National Desk

LENGTH: 951 words

HEADLINE: BREVITY SERVES TO SOOTHE THE C.I.A. AND THE SENATE

BYLINE: By MARTIN TOLCHIN

DATELINE: WASHINGTON, June 20

BODY:

This is a town of proud people and institutions, where political grudges are often held for years and where peace treaties are rare, especially after a public fracas. But in recent weeks the Senate Select Committee on Intelligence and the Central Intelligence Agency have quietly concluded a new working agreement inspired by their worst rupture in memory.

It was only in April that committee leaders had scorned the agency for not informing them of the C.I.A.'s role in the mining of Nicaraguan harbors, in violation of the Intelligence Oversight Act of 1980, which requires the agency to keep the Senate and House intelligence committees "fully and currently informed" of any "significant anticipated intelligence activity."

Senator Barry Goldwater, the Arizona Republican who is the committee chairman, castigated William J. Casey, Director of Central Intelligence, as initiating "an act of war." Senator Daniel Patrick Moynihan, the New York Democrat who is vice chairman of the committee, resigned his post in protest.

"The mining was a crisis," Mr. Moynihan recalled. "If we didn't come through that crisis with something changed, the system would have failed."

Anger and Recriminations

In the cold aftermath of the anger and recriminations, the committee leaders pressed for a new understanding between the committee and the agency, reduced to writing, approved by President Reagan and signed by Mr. Casey and the committee members. Where 200 pages of laws had once been propounded to specify what the agency could not do, the committee leaders now sought a simple agreement that described when the agency, and indeed all Government intelligence agencies, was required to notify Congress of a covert operation.

Few anticipated that the negotiations on such a change would be smooth, according to several participants. But a memorandum of understanding was achieved a mere four weeks after the negotiators first met.

Earlier this month Mr. Casey and the members of the Senate committee placed their signatures on a two-page agreement, approved by President Reagan, that specifies those circumstances in which the agency is required to brief the senators. The crux of the agreement is that the senators are to be informed of any operation, such as the mining, that requires the President's approval. The

(c) 1984 The New York Times, June 21, 1984

agreement also requires the agency to inform the committee whenever it changes the objectives of a covert operation.

'Devoid of Any Acrimony'

The context of the negotiations was established at a meeting April 26, in the aftermath of the Nicaraguan mining fiasco, when Mr. Casey came as close to an apology as anybody expected, Mr. Moynihan rescinded his resignation and the committee and the agency announced their joint intention to develop new procedures.

The next day, the Senate committee staff met with Ernest Mayerfeld, deputy director of the C.I.A.'s Office of Legislative Liaison, and other agency officials, in the committee's security-proofed quarters on the fourth floor of the Capitol. The objective was to form guidelines for a new working relationship.

"The process was devoid of any acrimony," Mr. Mayerfeld recalled.

Senator Moynihan attributed the harmonious spirit to the agency's recognition that new procedures were imperative. "The career people knew perfectly well what a disaster we had had," he said. "They knew that it was in their interest to have the system work."

Insisting on Brevity

Within three days, Mr. Mayerfeld and his aides came up with a set of principles. The committee staff sought to translate those principles into a detailed set of directives, Mr. Moynihan said. But the Senator, aware that the agency had previously operated under a long set of prohibitions, insisted on brevity.

"We had a shouting session here in my office," he said. "Bureaucracies around here feel if it's longer it's better. I think if it's shorter it's better. I said, 'Get it down to two pages.'"

Once this brevity had been achieved, the document was quickly accepted by the agency. "Mr. Casey approved an early draft," Mr. Mayerfeld said, "and the final piece of paper was just some fine-tuning and language-honing."

Mr. Casey brought the agreement to the senators to be signed, then "we signed them, and he disappeared," Mr. Moynihan said. Ten days later, with Mr. Casey nowhere to be found, Garrett Chase, the Senate committee's counsel, was dispatched to go to the agency and get the Director's signature. "We said, 'Don't come back without it,'" Mr. Moynihan said.

According to Mr. Mayerfeld, Mr. Casey had been away on a trip. "He signed it the day after he came back," Mr. Mayerfeld said.

Is the Agency Laughing?

One Senator on the committee said he believed that the ease of the negotiations reflected not that the agency had been chastened, but that the document was meaningless. "It was simply a face-saving device for the committee," said the Senator, who asked not to be identified. "The agency

PAGE 4

(c) 1984 The New York Times, June 21, 1984

people are probably laughing at us, and will carry on as before.''

Indeed, leaders of the House intelligence committee, despairing of reaching a meaningful agreement with the agency, intend to press for new legislation that spells out the agency's obligations in some detail.

Although Mr. Moynihan is pleased with the new agreement, he says it is not nearly as important as the actual relationship between the agency and Capitol Hill.

'What is needed is a relationship of mutual confidence based on mutual interest,' the Senator said. 'Absent that, rules don't help much. When the rules work, it is a sign that the relationship works.'

GRAPHIC: drawing

SUBJECT: CONGRESSIONAL COMMITTEES

ORGANIZATION: CENTRAL INTELLIGENCE AGENCY (CIA); SENATE (US); SENATE SELECT COMMITTEE ON INTELLIGENCE; CONGRESS (US)

NAME: TOLCHIN, MARTIN

GEOGRAPHIC: NICARAGUA; UNITED STATES

OGC LIBRARY

MAY 1985

98TH CONGRESS
2d Session

SENATE

REPORT
98-665

REPORT
OF THE
SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE
JANUARY 1, 1983, TO DECEMBER 31, 1984



OCTOBER 10 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1985

51-010 O

as to the adequacy of command and control over the Nicaragua program. On this basis, the Chairman wrote to Director Casey on October 17, 1984, asking for a "full briefing" on this matter.

The Committee held a closed session on October 22 to hear testimony from Agency officials concerning the production and distribution of the manual. Subsequently, the matter was the subject of an investigative report of the CIA's Inspector General and the President's Intelligence Oversight Board.

In November, the press reported allegations by a Contra leader that CIA officers arranged visits to Washington for Contra leaders to lobby Members of Congress and advised on whom they should see and what they should say. Such conduct would raise questions of legality and propriety. Therefore, on November 9, 1984, the Vice Chairman of the Committee wrote to DCI Casey asking for a written report. In his reply of December 7, 1984, the DCI stated that, on the basis of "an extensive review of Agency files" and talks with Agency personnel, there is "no record or recollection to support" those charges.

→ COVERT ACTION REPORTING PROCEDURES

The DCI's failure to give the Committee adequate prior notice of the mining of Nicaragua's harbors raised questions as to whether the Committee and the Executive branch shared a mutual understanding of the Intelligence Community's statutory obligations. The Committee concluded that there was a need for explicit, written procedures to ensure Executive branch compliance with the requirements for reporting covert action activities.

The current statutory obligations of the Intelligence Community with respect to Congressional oversight, popularly referred to as the Intelligence Oversight Act of 1980, were enacted as section 407 of the Intelligence Authorization Act for Fiscal Year 1981 (P.L. 96-450, 14 October 1980). They are set forth in section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) and in Title V of the National Security Act of 1947 (50 U.S.C. 413).

The oversight legislation represents an agreement between the Executive and Legislative branches to replace a previous requirement for timely reporting of covert actions to as many as eight Congressional committees with a system that centralizes oversight in the Intelligence Committees under a new set of requirements.

This statutory system imposes upon the Director of Central Intelligence and the heads of all other Intelligence Community organizations the obligation, among other things, to:

Keep the intelligence committees "*fully and currently informed*" of all intelligence activities, including "any significant *anticipated* intelligence activity" (emphasis added).

Section 662 of the Foreign Assistance Act, as amended in 1980, specifies that each covert action operation is to be considered a "significant anticipated intelligence activity." This means that covert action operations must be reported to the Intelligence Committees prior to implementation in accordance with Title V of the National Security Act.

The oversight legislation imposes two additional obligations upon the DCI and other heads of Intelligence Community organizations, as follows:

To furnish any information or material concerning intelligence activities which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

To report to the committees in a timely fashion any illegal intelligence activity or significant intelligence failure.

All of the obligations contained in the oversight legislation are conditioned by preambular clauses, which specify that the obligations are to be undertaken:

To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the Legislative and Executive branches; and

To the extent consistent with due regard for the protection of classified information and intelligence sources and methods from unauthorized disclosure.³

The issue that arose with respect to the Nicaraguan harbor mining incident concerned the meaning of the term "significant anticipated intelligence activity." Representatives of the DCI and Committee staff worked together to formulate a number of reporting criteria and procedural mechanisms to enhance the abilities of the DCI and the Senate Select Committee to fulfill their respective responsibilities under the law.

Thus, agreement was reached on the written material that will be provided to the Senate Select Committee when a Presidential Finding is signed, so as to ensure that the Committee will be fully informed regarding the nature of each program approved by the President. Agreement also was reached on the subjects that should be covered by Executive branch witnesses in briefing the Committee on such programs.

A key component of the agreement that ultimately was achieved concerned recognition by the Executive branch that, while each new covert action operation is by definition a "significant anticipated intelligence activity," this is not the exclusive definition of that term. Thus, activities planned to be undertaken as part of ongoing covert action programs should in and of themselves be considered "significant anticipated intelligence activities" requiring prior notification to the intelligence committees if they are inherently significant because of factors such as their political sensitivity, potential for adverse consequences, effect on the scope of an ongoing program, involvement of U.S. personnel, or approval within the Executive branch by the President or by higher authority than that required for routine program implementation. The Senate Select Committee agreed to communicate to the DCI, in connection with each ongoing covert action program, the kinds of activities (in addition to those that change the scope of an operation or require approval by higher authority) that it would consider to merit prior

³ Neither the preambular language, nor the oversight legislation's specific provisions allowing for prior notice of significant anticipated intelligence activities only to eight specified Congressional leaders in extraordinary circumstances 9 with subsequent timely notice of covert actions to the intelligence committees), figured in the controversy over the mining of Nicaraguan harbors.

notice. The DCI agreed to take steps independently to ensure that the Senate Select Committee is also advised of activities that the DCI believes reasonably fall in this category.

It also was agreed that the Committee will be provided with a comprehensive annual briefing on all ongoing covert action operations, as well as regular information on implementation of each ongoing operation. On September 11, 1984, the full Committee met in closed session for this comprehensive briefing. In addition, the DCI and the Senate Select Committee both reaffirmed their commitment to protect information on covert action operations from unauthorized disclosure, with special regard for the extreme sensitivity of these activities.

These agreements, along with a number of additional provisions, were incorporated into a new set of procedures which were signed on June 6, 1984, by Chairman Barry Goldwater and Vice Chairman Daniel Patrick Moynihan, and by DCI William J. Casey for the Administration. As it noted in its announcement of this event at the time, the Committee considers the achievement of the agreements set forth in these procedures to be "an important development which should reduce the chances for a repetition of the kind of problem and misunderstanding which was recently encountered in this area."

The Committee intends to take steps to ensure that the procedures fulfill their intended function. In accordance with provisions in the procedures themselves, the Committee has asked for and received information on how the DCI plans to manage Agency compliance with the procedures. In addition, the procedures provide for an assessment of their effectiveness and impact by the DCI and the SSCI jointly, not later than one year after their effective date.⁴

INVESTIGATION CONCERNING POLITICAL VIOLENCE IN EL SALVADOR

Background

In Spring 1984, increasing public attention focused on continuing political violence in El Salvador, particularly the activities of extreme rightwing "death squads." Of particular concern to Members of the Senate were allegations that officials of the military, intelligence and security services of El Salvador were participating in systematic acts of political violence, and even that elements of the United States government were connected to this violence or had actually supported or encouraged death squad activities.

On April 3, 1984, Senator Kennedy proposed an amendment to H.J. Res. 492, a pending urgent supplemental appropriations bill containing funds for military assistance to El Salvador, which would have called for an investigation of "death squads" in that country, including "the extent of death squad activity; responsibility for organizing, directing and carrying out death squad killings; and progress in prosecuting those responsible for such killings."

Senator Kennedy explained his central concern as,

⁴ Experience subsequent to adoption of the procedures indicated, however, that further steps were necessary to ensure that delays not inadvertently result in failure to notify the Committee prior to implementation of significant activities. The Chairman and the Vice Chairman called this matter to the attention of the DCI, and he agreed to the establishment of specific time intervals for the notification process.